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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 2 of the Commission's)
Rules to Allocate Spectrum Below 3GHz for)
Mobile and Fixed Services to Support the)
Introduction of New Advanced Wireless)
Services, including Third Generation Wireless)
Systems)
)
Petition for Rulemaking of the Cellular)
Telecommunications Industry Association)
Concerning Implementation of WRC-2000)
Review of Spectrum and Regulatory)
Requirements for IMT-2000)
)
Amendment of the U.S. Table of)
Frequency Allocations to Designate the)
2500-2520/2670-2690 MHz Frequency)
Band for the Mobile Satellite Service)

ET Docket No. 00-258

RM-9920

RM-9911

OPPOSITION OF IPWIRELESS, INC.

Pursuant to Section 1.429(f) of the Federal Communications Commission's rules,¹ IPWireless, Inc. ("IPWireless"), by its undersigned attorneys, hereby submits its Opposition to the Petition for Reconsideration of the Satellite Industry Association ("SIA") filed on February 22, 2001 in the above-captioned proceeding.

I. BACKGROUND

On April 28, 2000, SIA filed a petition for rulemaking requesting that the Commission reallocate the bands 2500-2520 MHz and 2670-2690 MHz to the Mobile Satellite Service ("MSS"), either exclusively or on a co-primary basis with existing uses.² IPWireless and 40

¹ 47 C.F.R. § 1.429(f).

² *Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile Satellite Service*, Petition for Rulemaking of the Satellite Industry Association (filed April 28, 2000) ("SIA Petition").

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other parties filed comments on the SIA Petition. IPWireless argued that this spectrum should not be reallocated for MSS because SIA (1) failed to demonstrate that terrestrial and MSS sharing is technically feasible, (2) failed to demonstrate that MSS demand could not be satisfied by already allocated spectrum bands, and (3) ignored the widespread existing and planned future uses of terrestrial services in this spectrum and the benefits associated with such use.³ The vast majority of the other commenters similarly advocated that the Commission reject the SIA Petition.

In response to this flood of comments opposing the reallocation of the 2500-2520 MHz and 2670-2690 MHz bands for MSS, on January 5, 2001, the Commission rejected the SIA Petition.⁴ In so doing, the Commission found that (1) significant technical issues potentially impede the sharing of this spectrum between terrestrial and satellite systems, (2) MSS already has sufficient spectrum for the foreseeable future, and (3) the SIA Petition failed to provide sufficient reasons to reallocate spectrum from terrestrial to MSS services.

Subsequently, on February 22, 2001, SIA filed its Reconsideration Petition,⁵ arguing that the Commission failed to provide a “reasoned basis” for denying the SIA Petition, and therefore that the Commission must reconsider its decision.⁶ Specifically, SIA claims that sharing

³ IPWireless Comments (filed August 28, 2000).

⁴ *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Implementation of WRC-2000: Review of Spectrum and Regulatory Requirements for IMT-2000; Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile Satellite Service*, ET Docket No. 00-258, RM-9920, and RM-9911, Notice of Proposed Rulemaking and Order (rel. Jan. 5, 2001) (“NPRM” and “Order”).

⁵ *Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile Satellite Service*, Petition for Reconsideration of the Satellite Industry Association (filed Feb. 22, 2001) (“Reconsideration Petition”).

⁶ *Id.* at 5-8.

between terrestrial services and MSS may be feasible⁷ and that insufficient spectrum exists for MSS.⁸

II. SIA PROVIDED NO BASIS FOR THE COMMISSION TO RECONSIDER ITS DECISION

The SIA Reconsideration Petition should be rejected by the Commission because it fails to provide any basis for the Commission to revisit its decision.

A. The Reconsideration Petition Should Be Rejected by the Commission Because It Does Not Comply with the Commission's Procedural Rules

The Reconsideration Petition fails to comport with the Commission's rules for petitions for reconsideration. Rule 1.429(b) permits the Commission to grant a petition for reconsideration based on facts not previously presented to the Commission only in very limited circumstances.⁹ Specifically, the petitioning party must show that (1) the facts or circumstances relied on have changed since the last opportunity to present them to the Commission, (2) the facts relied on in the reconsideration petition could not reasonably have been known to the petitioner at its last opportunity to present them to the Commission, or (3) that reconsideration is in the public interest.¹⁰

The Reconsideration Petition, which is based on new factual assertions, fails to meet either of the first two criteria of this rule. Two new factual allegations serve as the underpinning for the Reconsideration Petition. First, SIA argues that band sharing between multichannel multipoint distribution services ("MMDS") and instructional television fixed services ("ITFS") – the incumbents in the spectrum at issue – and MSS is technically feasible.¹¹ SIA cites to a 1999 study by the Telecommunications Industry Association ("TIA") and to unspecified

⁷ *Id.* at 6-7.

⁸ *Id.* at 7-8.

⁹ 47 C.F.R. § 1.429(b).

¹⁰ *Id.*

recommendations of the International Telecommunication Union from 1994 to 1996.¹² All of these studies were available prior to the filing of the SIA Petition, yet SIA failed to present this alleged factual information to the Commission. Second, SIA claims that there is insufficient spectrum currently allocated to MSS because geostationary orbit (“GSO”) MSS systems and low earth orbit (“LEO”) MSS systems cannot share spectrum. SIA failed to make this factual assertion, again available to it prior to the filing of the SIA Petition, in the petition.

Additionally, SIA failed the third prong of the rule because it did not demonstrate that a Commission grant of the Reconsideration Petition would be in the public interest. In fact, in response to the NPRM that accompanied the Order denying the SIA petition, the vast majority of commenters demonstrated that any reallocation of the 2.5 GHz Band would not serve the public interest.

Accordingly, because the gravamen of the Reconsideration Petition consists of two factual allegations available to, but not raised by, SIA in the SIA Petition,¹³ and because reconsideration would not be in the public interest, the Reconsideration Petition is procedurally deficient and may not be granted by the Commission.

B. The Reconsideration Petition Should Be Rejected by the Commission Because It Fails to Present Factual Assertions that Warrant Reconsideration

Even if the Commission chooses not to reject the Reconsideration Petition on procedural grounds, it should reject the Reconsideration Petition because the petition fails to provide any valid reason for the Commission to reconsider its decision. First, SIA’s substantive claim that

¹¹ SIA Petition at 6-7.

¹² *Id.*

¹³ Any claims that SIA may make that the World Radio Conference-2000 (“WRC-2000”) occurred after it filed the SIA Petition would miss the point because SIA had an opportunity to file reply comments after the conclusion of WRC-2000.

TIA study TSB 86¹⁴ showed that interference is not a problem between MSS and MMDS/ITFS¹⁵ is not only groundless, but completely misrepresents both the findings and the parameters of this study. TSB 86 addressed sharing in the 2165-2200 MHz band, not the 2500-2690 MHz band (“2.5 GHz Band”). The inapplicability of TSB 86 to the 2500-2690 MHz band and thereby to MMDS/ITFS services is clear from the title of study: “TIA/EIA Telecommunications Systems Bulletin: Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the *Band 2165-2200 MHz*.” (emphasis added)

Not only did TSB 86 not address interference issues between MMDS/ITFS and satellite services, but it studied interference issues inapplicable to sharing between such services. In studying the 2165-2200 MHz band, TSB 86 addressed sharing between satellite systems and fixed point-to-point microwave systems. The MMDS and ITFS services in the 2.5 GHz Band are typically point-to-multipoint systems that utilize omnidirectional or sectorized transmit and receive antennas, not point-to-point microwave systems that utilize highly directional antennas like those systems in the 2165-2200 MHz band. With fixed point-to-point service, interference typically occurs only when the MSS downlink signal is aligned with the boresight of the microwave receiver; MMDS and ITFS receivers are susceptible to interference from satellite signals in a much broader range of situations. Thus, different interference issues arise between MMDS/ITFS systems and MSS systems than arise between point-to-point microwave systems and MSS systems. SIA failed to introduce any studies specific to the 2.5 GHz band or demonstrating that sharing between MMDS/ITFS systems and MSS systems is feasible.

¹⁴ TIA/EIA Telecommunications Systems Bulletin: Criteria and Methodology to Assess Interference Between Systems in the Fixed Service and the Mobile-Satellite Service in the Band 2165-2200 MHz, TSB86, October 1999.

¹⁵ Reconsideration Petition at 6-7.

Second, SIA failed to demonstrate that insufficient spectrum is currently allocated for MSS or that, if there is insufficient spectrum for MSS, that spectrum in the 2.5 GHz Band is the appropriate spectrum to reallocate for MSS. SIA claims in its Reconsideration Petition that there is insufficient spectrum because GSO MSS systems cannot share spectrum with LEO MSS systems.¹⁶ Yet SIA concedes, in a footnote in the Reconsideration Petition, that “newer, carefully designed” LEO MSS systems are capable of sharing spectrum with GSO MSS systems.¹⁷ There is, of course, no reason that the Commission should not require the applicants for future LEO MSS authorizations to design their own systems “carefully” so as to be able to share spectrum with GSO MSS systems.¹⁸

Further, even if the Commission were to accept SIA’s unproven premise that insufficient spectrum is currently allocated for MSS, the Reconsideration Petition offers no reason to examine reallocation of any part of the 2.5 GHz band. Indeed, in response to the notice of proposed rulemaking that accompanied the Order, numerous parties, including IPWireless, filed comments demonstrating the significant current and pending uses of the 2.5 GHz band to provide advanced wireless services. SIA provided no showing that these services should be displaced in favor of additional MSS.

¹⁶ *Id* at 7.

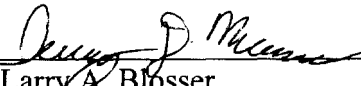
¹⁷ *Id* at 7-8 note 17.

¹⁸ The ability of carefully designed LEO MSS and GSO MSS systems to share spectrum is inapposite to the inability of fixed and mobile services to share spectrum in the 2.5 GHz band. As the Industry Association Group report accompanying the joint CTIA, TIA and PCIA comments found, fixed and mobile communications service providers and equipment manufacturers have concluded that sharing in the 2.5 GHz Band is “not possible.” Joint Comments of the Cellular Telecommunications & Internet Association [“CTIA”], Telecommunications Association [and] Personal Communications Industry Association [“PCIA”], ET Docket No. 00-258, RM-9910 and RM-9911 at Report of the Industry Association Group on Identification of Spectrum For 3G Services, p. v (filed Feb. 22, 2001).

III. CONCLUSION

For these reasons, IPWireless respectfully requests that the Commission deny the SIA Reconsideration Petition.

Respectfully submitted,
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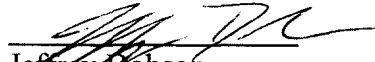
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